





# **THE COLOMBIAN TAX INCENTIVES FOR THE ORANGE ECONOMY:**

**IDEAS FOR THEIR  
ENHANCEMENT**



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# THE COLOMBIAN TAX INCENTIVES FOR THE ORANGE ECONOMY: IDEAS FOR THEIR ENHANCEMENT

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## Table of contents

Abbreviations / 9

Introduction / 13

I. Background of the tax incentive:

Orange Economy goals / 19

The Orange Economy theory / 19

Orange Economy as public policy in Colombia / 24

2. Direct and Indirect Orange

Economy Tax Incentives / 33

Pre-Orange tax incentives / 33

Orange tax incentives / 43

3. Analysis of the Orange Tax Incentives / 51

Tax incentives to promote the creation of Orange

Development Zones (Áreas de Desarrollo Naranja) / 52

Deduction for investments or donations  
to Orange projects / 56

Income tax exemption for Orange activities / 60

Conclusions and recommendations / 69

References / 75

Annex A / 79



## Abbreviations

BANCOLDEX: Banco de Comercio Exterior de Colombia. Colombian International Trade Bank.

Colombian Orange Economy Tax Incentive: 7-year income tax exemption applicable to national companies dedicated exclusively to one of the 27 activities qualified as creative activities or industries with technological added value, approved by the Orange Economy Committee.

COTELCO: Colombian Association of Tourism and Hotels.

DANE: Departamento Administrativo Nacional de Estadística (Colombia). National Department of Statistics.

DIAN: Dirección de Impuestos y Aduanas Nacionales (Colombia). Tax and Customs National Service.

ISIC activities: International Standard Industrial Classification of All Economic Activities issued by the United Nations.

OECD: Organisation for Economic Co-operation and Development.

Orange Economy: This term has been subject to diverse and inconsistent definitions both in the theory and in public policy documents in Colombia. For the purposes of this work, it will be assumed that the Orange Economy is a sector of the economy composed by cultural and creative activities, defined by their symbolic value instead of their use value, which results in the transformation of ideas into cultural goods and services. Cultural activities include the arts, heritage, and conventional cultural industries. Creative activities include functional creations, new media and software, and creativity supporting activities.

Orange Economy Committee: Committee belonging to the Colombian Ministry of Culture in charge of the approval of projects to benefit from the tax incentive.

Orange Act: Law 1834 of 2017 that set up the bases for the government's implementation of the Creative Economy Integral Policy (Orange Policy).

Orange Policy: Creative Economy Integral Policy established by the Orange Act, implemented through several norms.

Orange Economy Income Tax Incentive: Income tax exemption established in Section 235-2 of the Colombian tax code, applicable to specific activities related to the Orange Economy.

Orange Economy Income Tax Incentive Regulatory Decree: Decree 286 of 2020 that regulates the Orange Economy Income Tax Incentive.

Orange tax incentives: (i) Tax Incentives to promote the creation of Orange Development Zones (Áreas de Desarrollo Naranja), (ii) Deduction for investments or donations to Orange projects, and (iii) Income Tax Exemption for Orange activities.

PND: Plan Nacional de Desarrollo. Colombian National Development Plan that fixes development strategies for terms of 4 years.

Pre-Orange tax incentives: Tax benefits not explicitly created for the promotion of the Orange Economy but that have an impact on Orange activities.



## Introduction

One of the main political goals of the current Colombian Government is the promotion of the Orange Economy, a sector that encompasses cultural and creative activities. Indeed, it has implemented three tax benefits to this end: (i) a tax incentive for the creation of Orange Development Zones, (ii) tax deduction for investments and donations to Orange projects, and (iii) the 7-year tax exemption for companies involved in Orange activities. This work presents a critical assessment of these tax instruments to analyse whether they fulfil their purposes and to formulate ideas for their enhancement.

Chapter I presents the origins of the concept of Orange Economy, explains the characteristics that activities must fulfil to qualify in this sector, and proposes a theoretical definition of the Orange Economy. This section also describes the instruments used in Colombia's implementation of a public policy to promote this sector. Chapter II groups the tax instruments available in Colombia that directly or indirectly benefit activities included or related to the Orange Economy and analyses their main characteristics. Section 2.1. labels the tax benefits introduced before the creation of the Orange public policy as pre-Orange tax incentives. These include tax advantages for specific cultural industries such as

book publishing, film production, and financing culture infrastructure; tax incentives for financing research, technological development and innovation; and a simplified tax regime for micro, small, and medium-sized enterprises. Section 2.2. describes what in this work is referred to as Orange tax incentives; i.e., tax incentives to promote the creation of Orange Development Zones (Áreas de Desarrollo Naranja), tax deduction for investments or donations to Orange projects and the income tax exemption for Orange activities). Chapter III analyses the characteristics of the Orange tax incentives and refers to comparable instruments implemented in other jurisdictions to promote similar activities, as well as the interaction of the incentives with the domestic tax system. Finally, Chapter IV presents a conclusion of the analysis and propose ideas to enhance the existing Orange tax incentives.

Without intending to be an exhaustive assessment of the Orange Economy's policy in Colombia, the purpose of this work is to contribute to the tax discussions about the Orange Economy and propose elements that future tax reforms should consider when designing instruments that can boost this sector of the economy. Indeed, a thorough analysis of the specific goals of each of the instruments (reduction of real estate costs, attracting financing, and relief of tax burden on operations) should consider similar experiences in other countries<sup>1</sup>. In any case, the implementation of changes to these tax

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1 For example, this work considers the following analysis that assesses similar incentives implemented in the state of Louisiana: Mt. Auburn Associates. Utilising Tax incentives to Cultivate Cultural Industries and Spur Arts-Related Development. A report prepared by the Louisiana Office of the Lt. Governor and the Department of Culture, Recreation and Tourism, (2007).

benefits would require further analysis by relevant agents such as the Finance Ministry, the Deputy Ministry of Creativity and the Orange Economy, the Orange Economy entrepreneurs, and potential investors in this sector, as well as a democratic debate about the advantages of granting a particular tax treatment to this sector.

Through a systematic review of the Colombian tax code and collecting tools implemented in other countries, this research identifies the limitations of the current tax incentives to meet their purposes and proposes ideas for their improvement. This work evinces that the concept of Orange Economy is innovative in grouping cultural and creative industries under one single sector composed of activities that can synergise. However, the definition of the Orange Economy and the activities that it should cover is not sufficiently clear to all relevant players in the market. This analysis also shows that the three Orange tax incentives are part of a governmental policy that involves different institutions and diverse legal instruments. It also evinces that certain tax benefits granted to activities related to the Orange Economy were already in place before the introduction of the Orange tax incentives. Considering that the scope of this work is limited to a conceptual analysis of the legal instruments, further research on this topic should focus on the economic impact of the existing incentives and the potential effects of the alternatives. For that purpose, the convenience of the incentives should be analysed in terms of neutrality, simplicity, and stability<sup>2</sup>. The implementation of the norms should also be subject

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2 Based on the three rules of thumb for the design of tax systems according to 'The economic approach to tax design' in Mirrlees, J. and Stuart, A. *Tax by Design: The Mirrlees Review*. (Great Britain: Institute for Fiscal Studies, 2011).

to a constitutional debate on the impact on the tax principles of efficiency and equity<sup>3</sup>.

Each of the three Orange tax incentives responds to different specific purposes and has inherent limitations and separate alternatives for its enhancement. The tax incentive for the creation of Orange Development Zones proposes real-estate tax relief to reduce property costs in the formation of urban areas in which Orange activities would be developed. The regulation introduced for this purpose is a guideline for the municipalities to implement these tax reductions. However, in the end, materialising the specific relief measure depends on the willingness of each city to renounce certain tax prerogatives in order to promote the creation of Orange Development Zones in their territory. The central government could ensure the implementation of an incentive by introducing an income tax credit to real-estate taxes paid by taxpayers developing these zones, or by implementing other tax benefits related to the activities carried out in these areas.

Tax deduction for investments and donations to Orange projects are instruments that promote investments in Orange Economy businesses. As is explained in the corresponding chapter of this work, the specialised literature on tax incentives for innovative entrepreneurship and start-ups suggests that incentives to reduce the taxation on the gains resulting from the growth in the value of these investments do indeed promote these industries<sup>4</sup>. In particular, and given that these businesses

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3 See articles 95 and 363 of the Colombian Constitution developed through constitutional doctrine by the Constitutional Court.

4 For example, OECD. Industry and Technology Policies in Korea. (OECD Publishing, 2014).



might not be expected to generate income during their early stages, the tax benefit intended to promote the flow of capital towards Orange projects is more useful in promoting this sector of the economy than other types of benefits such as a relief on income derived by the businesses. Taking into account the financial risk associated with these new businesses, the specialised research on the matter concluded that business angels and venture capital funds, which are still scarce in Colombia, are a suitable source of financing and transfer of knowledge to Orange start-ups<sup>5</sup>. Therefore, establishing income and capital gain benefits for investments made by business angels and venture capital funds in Orange Economy start-ups could increase the existing tax deduction for investments and donations to Orange projects.

Tax exemption for companies dedicated to Orange activities is intended to reduce income tax at company level during the first seven years of activity. This benefit is limited to entities qualified before the Ministry of Culture as Orange companies that start activities before the end of 2021. Extending this relief to the distribution of dividends would significantly enhance the incentive considering that the Colombian dividend tax system establishes that, as a rule, dividends corresponding to tax-exempted income are subject to a higher tax rate that recaptures the tax unpaid at company level. A preferential tax rate for income derived from Orange activities generated by individuals registered in the SIMPLE Regime and an extension of the current tax exemption

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5 Wiesner Manrique, Daniel and Francisco Giraldo Jaramillo. *Economía Naranja: hacia una política pública asertiva*. (Colombia: Instituto de Ciencia Política Hernán Echavarría Olóza-ga, 2019).

to enterprises with gross income above the current cap to access this benefit (approx. USD 700,000) could also complement the existing stimulus. Alternatively, the current incentive could be replaced by VAT exemption for Orange products and services, considering that new businesses may not be expected to produce profits during the first seven years.

## Background of the tax incentive: Orange Economy goals

### The Orange Economy theory

As stated by President Ivan Duque Márquez in his inauguration speech in August 2018, one of the main projects of his administration is the promotion of the Orange Economy<sup>6</sup>. Back in 2013, a book published by Duque Márquez and Buitrago Restrepo defined the Orange Economy as a “group of linked activities through which ideas are transformed into cultural goods and services whose value is determined by intellectual property, including the Cultural Economy, the Creative Industries and the Creativity Supporting Activities”<sup>7</sup>.

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6 Duque Márquez, Iván. “El Pacto por Colombia” Inauguration speech. (Bogota: 2018).

7 Buitrago Restrepo, Felipe and Iván Duque Márquez. *The Orange Economy, an infinite opportunity*. (Inter-American Development Bank, 2013), 40.

The success of the easy-to-remember term Green Economy<sup>8</sup> inspired the decision to also name this sector after a colour. In this case, orange evoked the cultural and creative traditions of different cultures. For example, ancient Egyptians used *realgar*, an orange pigment to decorate pharaoh's tombs, as did the Tupac Katari of Peru<sup>9</sup>.

Duque Márquez and Buitrago Restrepo's theoretical definition was intended to create a concept to designate a common area in which creative industries, cultural industries, copy-right industries, and content industries converge<sup>10</sup>. However, this theoretical concept can be too broad to be used as the basis for a political policy: what is a cultural good? Many ideas can be turned into services whose value is determined by intellectual property, but are all these services covered? Or is it just cultural services that are included? If the latter is the case, what makes a service cultural? Indeed, the definition proposed by the authors is novel in grouping into the same sector cultural activities, which might be easily identifiable, and creative activities, which cause more problems when trying to distinguish them from

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8 Somos Innovación. “#25 Economía Naranja y Creatividad en Colombia. Interview with Vice-Minister Felipe Buitrago”. [https://www.youtube.com/watch?time\\_continue=9&v=PrPM6ZtCe3c&feature=emb\\_title](https://www.youtube.com/watch?time_continue=9&v=PrPM6ZtCe3c&feature=emb_title)

9 Ibid.

10 These individual concepts were previously adopted and defined by prestigious institutions such as the United Nations Education, Science and Culture Organisation (UNESCO); the United Nations Conference on Trade and Development (UNCTAD); the World Intellectual Property Organisation (WIPO); the Department of Culture, Media and Sports of the United Kingdom (DCMS); and the Economic Commission for Latin America and the Caribbean (ELAC).

non-creative activities. It is also unclear, based on this definition, whether the reference to the Cultural Economy, the Creative Industries, and the Creativity Supporting Activities should be understood as an exhaustive list or merely as examples of some activities that can be classified as Orange Economy.

The term Orange Economy has been used inconsistently in different public policy instruments. For example, the Orange Economy Act refers to creative industries and uses the term cultural to designate one of the possible features that the activities must fulfil to be considered creative. The other possibility, according to this act, is to produce or trade services or goods protected by intellectual property. On the other hand, the DANE prepared a list of 101 specific activities covered by the Orange Economy; and income tax exemption for the Orange sector contains a list of 28 activities labelled “technological added value industries” and “creative activities”.

This lack of consistency may result from the fact that the concept is novel, but it is also an inevitable outcome of the lack of clarity on the theoretical definition of the term. In this regard, the specialised literature considers that the definition of the Orange Economy is still under discussions for its delimitation and that even some of the governmental entities have differences in their understanding of the concept<sup>11</sup>.

Based on Duque Marquez and Buitrago Restrepo’s theoretical definition as well as other definitions of the

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11 Wiesner Manrique, Daniel and Francisco Giraldo Jaramillo. *Economía Naranja: hacia una política pública asertiva*. (Colombia: Instituto de Ciencia Política Hernán Echavarría Olózaga, 2019), 9.

concept used in the First<sup>12</sup> and Second<sup>13</sup> Orange Economy Reports, the Orange Economy Act<sup>14</sup>, and by the Former Deputy Minister of Creativity and the Orange Economy<sup>15</sup>, this work will be based on the following conceptual definition: The Orange Economy is a sector of the economy composed of cultural activities and creative activities, defined by their symbolic value instead of their use value, and that result in the transformation of ideas into cultural goods and services.

The following chart presents a subclassification of cultural and creative activities that belong to the Orange Economy.

Cultural Activities

Composed by:

Arts and Heritage	Traditional artistic activities such as the visual arts, the performing arts, museums, archaeological parks, traditional gastronomy, etc.
Conventional Cultural Industries	Activities mainly associated with cultural expressions of the twentieth century, such as audio-visual productions, cinema, television, radio, editorial productions.

12 DANE. First Orange Economy Report (Colombia: 2019).  
13 DANE. Second Orange Economy Report (Colombia: 2019).  
14 Law 1834 of 2017.  
15 Somos Innovación. “#25 Economía Naranja y Creatividad en Colombia. Interview with Vice-Minister Felipe Buitrago”.  
[https://www.youtube.com/watch?time\\_continue=9&v=PrPM6ZtCe3c&feature=emb\\_title](https://www.youtube.com/watch?time_continue=9&v=PrPM6ZtCe3c&feature=emb_title)

## Creative Activities

Composed by:

Functional Creations, New Media and Software	Activities non-traditionally associated with culture but defined by their symbolic value to consumers instead of their use value. Includes design (architecture, graphic art and illustration design, jewellery, toys), content software (videogames, interactive content, virtual reality), new media (news and information services) and advertisement.
Creativity Supporting Activities	Creative research, development and innovation (Orange R+D+i), technical skills development for creative activities, governance and intellectual property rights and professional creative education.

This definition represents an effort to harmonise different definitions but is far from providing total clarity on the activities covered by this sector. Cultural activities should not pose significant challenges regarding their scope, as they cover what is traditionally considered culture. Of course, this does not exclude some possible debates about the eligibility of specific activities (for example, what traditional gastronomy is, or when a park can be classified as archaeological). As for creative activities, these need to be defined by their symbolic value rather than their use value, and they must represent the transformation of ideas into goods and services that are cultural in nature. In other words, not every functional creation, new media or software should be considered as part of the Orange Economy. Only those that result in cultural goods and products that derive their value from what they symbolise rather than from their use value belong to the Orange Economy. This same criterion applies to creativity supporting activities, which

must be related to research, development, innovation and training in creative activities resulting in cultural goods and products with a symbolic value.

This theoretical definition leaves a significant room for the institutions in charge of the implementation of the public policies to define the practical scope of the Orange Economy. Indeed, these institutions must draw the line between cultural and non-cultural and should establish criteria to identify which products are defined by their symbolic value.

The next section of this chapter (i) briefly describes the implementation of the Orange Economy public policy in Colombia, highlighting the inconsistent use of the term, (ii) mentions some discussions about activities included and not included, and (iii) also explains the policy instruments designed to promote this sector of the economy.

## Orange Economy as public policy in Colombia

According to Duque Márquez and Buitrago Restrepo, “Latin America and the Caribbean are well placed to use their immense reservoir of creative talent and cultural heritage to generate a distinctive comparative advantage”<sup>16</sup>. President Duque has insisted on the sector’s potential to foster economic growth in Colombia. On March 5, 2020, he declared: “the Orange Economy is composed of, among other things, radio, television and digital contents. It is a sector that can represent a

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16 Buitrago Restrepo, Felipe and Iván Duque Márquez. *The Orange Economy, an infinite opportunity*. (Inter-American Development Bank, 2013), 71.



larger part of Colombian GDP than the coffee sector or the mining sector”<sup>17</sup>. Indeed, based on DANE data, a study published by the OECD in 2019 concluded that in Colombia, the Orange Economy is growing significantly faster than most sectors<sup>18</sup>. The examples given by President Duque reveal the lack of clarity regarding the concept of the Orange Economy and imprecise use of the term. Radio, television and digital content activities should not be considered part of the Orange Economy if they do not meet the definition of what a creative activity is; i.e., that ideas are turned into cultural goods and services and derive their value from what they symbolise rather than from their use value. In this regard, it is probably only a few radio, television, and digital content businesses that could belong to the Orange Economy. News broadcasting can hardly classify into this concept, unless its content is cultural and its value for the customers derives from what it symbolises rather than from their use of the service.

The related public policy was initiated in Colombia with Law 1834 of 2017 (Orange Act), that set up the bases for the government’s implementation of the Creative Economy Integral Policy (Orange Policy). This law (i) assigned functions to different governmental institutions, (ii) created the Orange Economy National Committee to coordinate the development of the policy, (iii) established credit lines from the central government to support municipalities to finance Orange Economy infrastructure projects, (iv) urged the government to include teaching components in the education policy

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17 La Silla Vacía. “El efecto económico Covid: chao naranja, hola deuda”. (2020).

18 OECD. OECD Reviews of Digital Transformation: Going Digital in Colombia, (OECD Publishing, 2019), 86.

related to information and communications technology as a tool to develop innovations and applications, and (v) exhorted Bancoldex to create financing mechanisms for creative entrepreneurs.

In 2018, the implementation of the tax benefit for Orange businesses was a development of the Orange policy in the tax field. Although some activities related to the Orange Economy such as cinema productions and the editorial industry had already gained from tax benefits, the 2018 Tax Reform included tax exemption for a list of 28 activities considered part of the Orange Economy.

Based on the criteria established by specialised institutions in the fields of traditional craftsmanship, cultural tourism and retail, the DANE prepared a list of 101 ISIC activities. This list consists of 32 fully included and 69 partially covered ISIC activities (i.e., only some ISIC code products qualify). The following chart presents the list of Orange activities according to the DANE classification:

#### Fully included activities (32)

Other manufacturing industries	Manufacture of jewellery, costume jewellery and related items.
	Manufacture of musical instruments.
	Manufacture of games, toys and puzzles.
Editing activities.	Publication of books.
	Publishing of newspapers, magazines and periodicals.
	Other editing works.
	Edition of software

*Continues*

Cinematographic activities, video production of television programmes, sound recording, and music edition.	The production of cinematographic films, videos, television programmes, and television commercials.
	Post-production activities for motion pictures, videos, programmes, commercials, and television commercials.
	Distribution of cinematographic films, videos, programmes, commercials, and television commercials.
	Cinematographic film and video exhibition activities.
	Sound recording and music editing activities.
Programming, transmission and / or broadcasting activities.	Programming and transmission activities in the sound broadcasting service.
	Television programming and broadcasting activities.
Information service activities.	News agency activities.
	Other information service activities.
Advertising and market studies.	Advertising.
Other professional and scientific activities and techniques.	Specialised design activities.
	Photography activities.
Education	Cultural teaching.
Creative, artistic, and entertainment activities.	Literary creation.
	Musical creation.
	Theatrical creation.
	Audio-visual creation.
	Plastic and visual arts.
	Theatrical activities.
	Live musical entertainment activities.
	Other live entertainment activities.

*Continues*

Libraries, archives, museums, and other cultural activities.	Library and archive activities.
	Activities and operations related to museums, and buildings and historical site conservation.
	Botanical gardens, zoos, and nature reserves activities.
Sports activities and recreational and leisure activities.	Amusement park and theme park activities.

### Partially included activities (69)

<p>The weaving of textile products.</p> <p>Textile products finishing.</p> <p>Manufacture of knitted and crocheted fabrics.</p> <p>Manufacture of made-up textile articles, except clothing.</p> <p>Manufacture of floor mats and rugs.</p> <p>Manufacture of other textile articles.</p> <p>Manufacture of clothing, except leather clothing.</p> <p>Manufacture of leather articles.</p> <p>Manufacture of knitted and crocheted items.</p> <p>Manufacture of travel articles, handbags, and similar articles made of leather, and manufacture of saddlery and saddlery articles.</p> <p>Manufacture of leather and leather footwear, with any type of sole.</p> <p>Manufacture of other types of footwear, except leather and leather footwear.</p> <p>Manufacture of wooden containers.</p> <p>Manufacture of other wood products; manufacture of articles made of cork, basketry and plaiting.</p> <p>Printing activities.</p> <p>Printing-related service activities.</p> <p>Production of copies from original recordings.</p> <p>Manufacture of glass and glass products.</p> <p>Manufacture of other ceramic and porcelain products.</p>
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*Continues*

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Cutting, shaping and finishing of stone.  
 Forging, pressing, stamping and rolling  
 of metal; powder metallurgy.  
 Manufacture of other fabricated metal products.  
 Furniture manufacturing.  
 Other manufacturing industries.  
 Retail trade of books, newspapers, stationery and stationery  
 materials and supplies in specialised stores.  
 Retail trade of other cultural and entertainment  
 items in specialised stores.  
 Retail trade of computers, peripheral equipment,  
 computer programmes, and telecommunications  
 equipment in specialised stores.  
 Retail trade of clothing and accessories (including  
 leather goods) in specialised stores.  
 Retail trade of all types of footwear and leather articles  
 and leather substitutes in specialised stores.  
 Rail Passenger Transportation.  
 Passenger Transportation.  
 River passenger transport.  
 Hotel accommodation.  
 Accommodation in aparthotel.  
 Resort accommodation.  
 Rural accommodation.  
 Other types of visitor accommodation.  
 Camping areas and parks for recreational vehicles.  
 Sales of prepared meals at the table.  
 Self-service shop for prepared meals.  
 Food shop prepared in cafeterias.  
 Other types of selling prepared meals.  
 Sale of alcoholic beverages for consumption  
 within the establishment.  
 Wireline telecommunications activities.  
 Satellite telecommunication activities.  
 Computer systems development (planning,  
 analysis, design, programming, testing).  
 Computer consulting activities and computer  
 facility management activities.  
 Architectural and engineering activities and other  
 related technical consulting activities.  
 Research and experimental development in the  
 field of natural sciences and engineering.

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*Continues*

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Research and experimental development in the field of social sciences and humanities.  
 Other professional, scientific, and technical activities. Travel agency activities.  
 Other reservation services and related activities.  
 Executive activities of the public administration.  
 Regulation of the activities of organisations that provide health, educational, cultural and other social services, except social security services.  
 Early childhood education.  
 Preschool education.  
 Primary basic education.  
 Secondary education.  
 Academic middle education.  
 Technical secondary education and job training. Establishments that combine different levels of education.  
 Professional technical education.  
 Technological education.  
 Education provided by university institutions or technological schools.  
 University education.  
 Non-formal academic training.  
 Activities of professional associations.  
 Other associative activities.

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The measurement and delimitation of partially included activities poses another challenge for the government. Only some subsectors of these activities – that are not usually subdivided – could meet the criteria to qualify as Orange Economy activities. For example, not every textile product would be an Orange product nor can secondary education as a whole be understood as part of the Orange Economy. In this regard, the First Orange Economy Report establishes a plan of interinstitutional work to define the measurement methodologies applicable to partially included activities<sup>19</sup>.

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19 DANE. First Orange Economy Report. (Colombia: 2019), 5.

The Orange Economy is also a transversal component of the most recent National Development Plan 2018-2022 (Plan Nacional de Desarrollo) that considers that promoting this sector is beneficial for productivity and job creation. This document also highlights the areas of convergence between the Orange Economy and the tourism industry and contemplates the creation of Orange Development Zones to promote Orange Economy clusters.

Wiesner and Giraldo identified the following three matters on which the government should focus to develop the Orange Economy effectively: (i) provide access to funding, (ii) enhance the customs and tax instruments, and (iii) promote the training of skilled workforce<sup>20</sup>. The following chapters and sections of this work focus on analysing the existing tax benefits, discussing the critical elements of Orange Economy income tax exemption, identifying factors that could be improved, and proposing alternatives for its enhancement.

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20 Wiesner Manrique, Daniel and Francisco Giraldo Jaramillo. *Economía Naranja: hacia una política pública asertiva*. (Colombia: Instituto de Ciencia Política Hernán Echavarría Olózaga, 2019), 5-6.





## Direct and Indirect Orange Economy Tax Incentives

The focus of this work is the analysis of the tax instruments specifically designed to promote the Orange Economy (Orange tax incentives). However, it would not be sufficiently comprehensive without mentioning other tax benefits that have an impact on activities that belong to the scope of the Orange Economy (pre-Orange tax incentives). In assessing Orange businesses for the purposes of taxation, it is important to consider these pre-Orange tax incentives as they provide useful insights into different already existing tax instruments which have yielded excellent results. In fact, in some cases, pre-Orange tax incentives can even complement Orange tax incentives.

### **Pre-Orange tax incentives**

Prior to the Orange policy, the Colombian tax system had already implemented a number of tax incentives to promote certain activities that were then covered by the definition of the Orange Economy. The following are

the most notable examples of tax benefits than can still be used by some Orange business entrepreneurs and investors.

### Incentives for the book industry

The Book Act issued in 1993<sup>21</sup> established a 20-year income tax exemption for book publishers. The original text of this law determined that dividends distributed by book publishers were not taxable at shareholder level either. This provision is relevant, considering that since 2016, dividends distributed that correspond to untaxed profits at corporate level are subject to a higher dividend tax at shareholder level. Therefore, unless a particular norm such as the tax incentive for the book industry provides otherwise, tax exemptions will be limited to a sort of tax deferral as the amount of tax relief when the company derives the income is then levied upon distribution of dividends to the shareholders.

In 2016, Law 1819 of 2016 replaced this income tax exemption with a reduced income tax rate of 9%, instead of the general corporate income tax rate (31% for 2021 and 30% from 2022). Besides, investments in bookstores are fully deductible from the investor's income tax, and books are VAT-exempt.

### Incentives for the film industry

Donations to or investments in Colombian film productions are promoted with an income tax deduction of

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21 Law 98 of 1993.

165% of the value invested or donated<sup>22</sup>. To be eligible for this benefit, the Ministry of Culture must certify the donations or investments by issuing securities that can be freely negotiated on the market by endorsement.

In order to promote Colombia as an ideal setting for the filming of cinematographic works, Law 1556 of 2012 created a mechanism through which film producers can present projects to totally or partially shoot a cinematic work in Colombia and receive compensation equivalent to 40% of the expenses related to cinematographic services incurred within the country. Film producers may also receive compensation equal to 20% of the value of hotel, food, and transportation expenses.

Law 1955 of 2019 that implemented the National Development Plan for 2018-2022, extended the scope of this incentive to any audio-visual genre (not only films) and established, as an extra benefit, an income tax credit for foreign audio-visual productions that are produced, or post-produced in Colombia. This tax credit is equivalent to 35% of the investment made in the hiring of Colombians that provide production or post-production services, including hotel, food, and transportation for the respective work. Foreign producers (non-Colombian tax residents) can request a Certificate of Audio-visual Investment from the Colombian Film Promotion Committee that will qualify them for this tax credit. These documents can be negotiated by Colombian taxpayers who are entitled to use them in their income tax return. The income perceived by the producers for the transfer of these certificates is not taxable in Colombia, and therefore will not be subject to withholding tax. The project must certify a minimum investment in production in Colombia of 1,800 legal monthly minimum

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22 Law 814 of 2003 amended by Law 1607 of 2012.

wages (approx. USD 430,000) and is subject to approval by the Colombian Film Promotion Committee. Once approved, a Colombian Filming Contract has to be signed, establishing the conditions for the payment of the compensation and the obligations of the producer.

Regarding VAT, services directly related to exported film and television production are tax exempt. To fulfil this requirement, the beneficiary of the services must broadcast the production abroad. If Colombian users access the content of these productions on the international market (for example, access to the creations on a platform, such as Netflix), the services are still deemed exported, as the beneficiary of the services will be located abroad.

According to the OECD, the number of films produced annually in Colombia increased from 5 in 2013 to 41 in 2016. Cinema tickets for Colombian films also rose from 2.3 million in 2007 to 4.7 million in 2016<sup>23</sup>. These figures show the positive effects of the Colombian policy on promoting cinematographic activities, in which the tax incentives mentioned above play a crucial role in attracting businesses in this sector to Colombia.

The modifications to the income tax incentive implemented through Law 1955 of 2019 highlight the commitment of President Duque's administration to promote the audio-visual genre, which can be part of the scope of the creative or cultural activities that belong to the Orange Economy. However, these incentives do not specifically apply to the Orange Economy, as only cultural audio-visual activities could be deemed Orange.

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23 OECD. OECD Reviews of Digital Transformation: Going Digital in Colombia, (OECD Publishing, 2019), 86.

## Incentives for the tourism sector

The inclusion of the tourism sector to the Orange Economy has been subject to debate among different relevant actors. The National Director of COTELCO (Colombian Association of Tourism and Hotels) concluded that tourism is not part of the theoretical definition of the Orange Economy but that it contributes to the diffusion and consolidation of this sector as a primary motivation for travellers is to discover cultural expressions related to the Orange Economy<sup>24</sup>. Although tourism does not fit in with the scope of the theoretical definition of the Orange Economy, some public policy instruments consider it an Orange activity.

For example, Section 2 of the Orange Act mentions “tourism and tangible and intangible cultural heritage” as part of the examples of activities covered by the Orange Economy. However, the wording of this section in Spanish (*Turismo y patrimonio cultural, material e inmaterial*) is not specific enough to determine whether it includes any kind of tourism or only cultural tourism. Cultural tourism could be indirectly associated with the cultural activities defined as being part of the Orange Economy if it is related to services ancillary to cultural activities. However, tourism does not fit any classification of Orange activities as such. Besides, non-cultural tourism is clearly not part of the Orange Economy.

The National Development Plan 2018-2022 also refers to the active connection between the Orange Economy and Tourism, and the DANE’s First Orange Economy Report<sup>25</sup> establishes the following criteria to classify

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24 Toro, Gustavo. “¿El turismo forma parte de la economía naranja?”. (Enfoque Vallenato, 2018).

25 DANE. First Orange Economy Report. (Colombia: 2019), 10.

activities as part of cultural tourism: (i) activities related to transportation services with themes associated with Colombian cultural heritage, (ii) accommodation in properties declared cultural property or in properties located in areas of historical interest, (iii) activities associated with traditional Colombian cuisine integrated into the offer of cultural tourism products, and (iv) restaurant and bar services located in places of tourist interest. This report is accurate in drawing a line between what could be called Orange tourism, associated with cultural activities, and other tourism activities. However, it reveals an inconsistent understanding of what the Orange Economy includes.

Similarly, article 235-2, num. 1 of the Colombian tax code includes cultural tourism as being eligible for the Orange income tax incentive. Considering that this provision does not define this term, Decree 286 of 2020 (Orange Economy Income Tax Incentive Regulatory Decree) contains a list of four activities that qualify as cultural tourism. The next chapter further analyses this incentive.

These three examples of instruments that include tourism or cultural tourism in the scope of the Orange Economy reveal the lack of coherence between the public policy and the theoretical definition of Orange Economy. It also evinces how the practical implementation of the Orange policy does not respond to the theory and tends to expand the concept of Orange Economy to other activities.

Besides the debate on the inclusion of the tourism sector in the Orange Economy and considering the strong relationship between these two sectors, it is essential to consider the following two tax instruments from which the tourism sector already benefited before the Orange policy emerged.

### *Hotels*

Hotel services rendered in hotels built or renovated between 2003 and 2018 benefit from a 30-year income tax exemption. From 2019, hotels built or renovated in municipalities of less than 200,000 inhabitants benefit from a 20-year reduced income tax rate of 9%. Finally, hotel services rendered to non-residents are exempt of VAT.

### *Theme parks*

Section 240 of the tax code provides that, from 2019, new projects involving theme parks, ecotourism and agro-tourism parks, and nautical docks benefit from a 10-year reduced income tax rate of 9%. If these new projects are built in municipalities of less than 200,000 inhabitants, the term of the special tax rate will be 20 years. Services rendered in renovated or expended theme parks also benefit from a 10-year reduced income tax rate of 9%. These incentives were implemented simultaneously to the introduction of income tax exemption for Orange activities.

Special deduction for donations and investment in research, technological development and innovation

Tax incentives to promote investment in research and development are intended to reduce the costs and uncertainty of performing research and development, and therefore are a key driver of innovation and growth<sup>26</sup>.

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26 Appelt, Silvia, Fernando Galindo-Rueda and Ana Cinta González Cabral. "Measuring R&D tax support: Findings from

According to a report on measuring research and development tax support prepared by the OECD, these incentives “have proliferated among OECD countries in recent years consolidating its position as a key instrument in governments’ policy toolbox to promote business R&D”<sup>27</sup>. Indeed, it is important to mention the existing benefits in this field, considering that one of the main elements of the definition of the Orange Economy is the transformation of ideas into products and services. These processes of transformation may require research, technological development, and innovation.

To promote investments in research, technological development and innovation, the Colombian tax system establishes an income tax deduction of 100% of the investment made in projects involving research, technological development, and innovation. Donations to finance scholarship for science, technology, and innovation projects received by the Francisco Jose de Caldas Fund (National Fund for Science, Technology and Innovation) are also fully deductible from income tax. Besides, 25% of the amount invested in research, technological development, and innovation projects authorised by the Ministry of Science<sup>28</sup> can also be credited to income tax.

These income tax deductions were first introduced in Colombia in 1992 and have been subject to changes in the percentage deductible. Then, a more attractive

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the new OECD R&D Tax Incentives Database”. *OECD Science, Technology and Industry Working Papers*, No. 2019/06. (OECD Publishing, 2019), 9.

<sup>27</sup> Ibid.

<sup>28</sup> Formerly Colciencias (Colombian Institute of Science, Technology and Innovation).



income tax credit for selected projects was introduced in 2016. Currently, these benefits are only applicable to investments in projects qualified by public institutions discarding the possibility for investors to access tax relief when investing privately in research and innovation.

Research into these measures reveals that they have not been sufficiently efficient given (i) a lack of understanding of the innovation process, (ii) institutional inefficiency to diffuse these mechanisms, and (iii) the instability of these provisions that have been reformed several times<sup>29</sup>.

Considering that research, development, and innovation are essential for many Orange activities, in particular those belonging to the category of creative activities that require investment to develop novel products or services, these incentives are relevant for the Orange sector. Accordingly, they should be articulated to the Orange policy and effectively communicated to Orange entrepreneurs so that they can take advantage of them. It is also recommended to discuss the possibility of applying the tax deduction or tax credit to private investments in research, development, and innovation of products and services that qualify as part of the Orange Economy, without having to request a special qualification from governmental entities such as Colciencias. This would potentially boost the incentives in this sector.

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29 Osorio Guiulfo Maria Gracia. "The Peruvian Research & Development Tax Incentive and its Impact on Business". Master of Law and Business thesis, Bucerius Master of Law and Business, (2018).

## “SIMPLE” Regime

As an effort to promote the formalisation of enterprises, the 2018 Tax Reform introduced a simplified tax regime (SIMPLE Regime) for small and medium enterprises. Legal entities domiciled in Colombia and individual Colombian residents with annual gross incomes lower than approx. USD700,000 can voluntarily opt for simple tax calculated on their gross income, to replace income tax, local turnover tax, and consumption tax. The fixed rates applicable to the gross income vary depending on the type of activity.

Although the SIMPLE Regime is not for Orange entrepreneurs, new businesses can benefit from this regime designed to ease formal tax obligations. The Orange Economy Guideline published by Colombia’s Ministry of Culture<sup>30</sup> mentions the SIMPLE Regime as one of the programmes and instruments for Orange entrepreneurs. This regime could be enhanced and better encompassed with the Orange income tax incentive by establishing preferential SIMPLE tax rates for taxpayers involved in Orange activities.

## Public Works Investments

In 2016, the government set up a programme to promote investments in education, infrastructure, health, and energy and water supply in the areas most affected by the conflict (ZOMAC). As part of the measures

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30 Ministry of Culture of Colombia. ABC Economía Naranja. [https://www.mincultura.gov.co/prensa/noticias/Documents/atencion-al-ciudadano/\\_ABC\\_ECONOMI%CC%81A\\_NARANJA\\_.pdf](https://www.mincultura.gov.co/prensa/noticias/Documents/atencion-al-ciudadano/_ABC_ECONOMI%CC%81A_NARANJA_.pdf)

implemented, income tax payers with a gross income of more than approx. USD300,000 can opt to pay up to 50% of their income tax obligations by financing projects approved by the Territorial Renovation Agency to contribute to the development of ZOMAC municipalities. In 2018, the scope of this provision was extended to also cover cultural infrastructure projects.

The National Development Plan 2018-2022 Law (Law 1955 de 2019) expressly broadened the list of projects that can be funded as an alternative to paying the income tax by including investments in Orange Development Zones. Private taxpayers, state-owned entities and private persons that participate in private-public partnerships can access this scheme.

## **Orange tax incentives**

As shown in the previous section, the Colombian tax system has a set of tax instruments to promote specific areas included in the scope of the Orange Economy. The incentives mentioned above can be complementary or subsidiary to the actual Orange tax incentives, intended to promote the Orange Economy. For example, individuals involved in Orange activities may not be eligible for the income tax exemption for Orange activities but can benefit from the SIMPLE regime.

This section will describe the general characteristics and eligibility conditions for the three incentives specially designed as Orange Economy tax instruments. The first of these incentives consists of a number of tax incentives for the creation of Orange Development Zones (Áreas de Desarrollo Naranja); the second, is an individual income tax deduction for donations or investments for specific Orange projects and entrepreneurship; and the third benefit consists in an income tax incentive for

companies dedicated to activities classified as Orange Economy activities.

### Tax Incentives to promote the creation of Orange Development Zones (Áreas de Desarrollo Naranja)

Section 179 of the Law approving the National Development Plan 2018-2022<sup>31</sup> defines the Orange Development Zones as geographical spaces to be delimited through land-use plans issued by territorial entities to promote cultural and creative activities. As per this provision, the creation of these areas will also contribute to the urban renewal and improvement of the location.

In line with the constitutional prerogatives granted to the municipalities, this national law does not directly establish tax benefits to promote the creation of these zones. However, it does authorise municipalities to implement exemptions in property taxes and property transfer taxes.

### Deduction for investment or donations to Orange projects

Investments in or donations to Orange projects approved by the Ministry of Culture, including Orange Development Zones, can benefit from an income tax deduction of 165% of the amount invested or donated<sup>32</sup>. The activities that can be selected by the Ministry of Culture for this purpose include Orange activities, plans

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<sup>31</sup> Law 1955 of 2019.

<sup>32</sup> Article 180 of Law 1955 of 2019.

to preserve the intangible cultural heritage, and infrastructure for the scenic arts.

For projects that do not involve arts and heritage activities, only small and medium enterprises are eligible for the tax benefit. Only cash contributions or donations qualify for these income tax deductions<sup>33</sup>. Investment or donation certificates that provide the right to claim the income tax deduction are securities that can be freely negotiated on the market by endorsement.

### Income Tax Exemption for Orange activities

Law 1943 of 2018 introduced a temporary 7-year income tax exemption applicable to income derived from a list of 28 activities classified as technological added value industries and creative activities. Ruling C-481 of 2019 issued by the Constitutional Court declared that Law 1943 of 2018 was unconstitutional for procedural mistakes during the debates that led to its approval. The effects of this ruling were deferred to January 1, 2020 and the government submitted a new tax reform bill to the Congress to restore the content of Law 1943 of 2018, with some changes concerning the previous law. In December 2019, Law 2010 of 2019 reintroduced the Orange Income Tax Exemption. In particular, article 235-2, numeral 1 of the tax code and Decree 286 of 2020 regulate this tax benefit, establishing the following conditions and procedure to apply for the tax exemption<sup>34</sup>:

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<sup>33</sup> Decree 697 of 2020.

<sup>34</sup> Article 235-2, num. 1 of the tax code and Decree 286 of 2020. The original wording of Article 235-2, num. 1 of the tax code can be found in Annex A.

- (i) The activities eligible for the tax incentive are only the following:

Manufacture of jewellery, costume jewellery and related items.
Books Publication
Edition of software
Production of cinematographic films, videos, television programmes, and television advertisements.
Post-production activities for motion pictures, videos, programmes, commercials and television commercials.
Distribution of cinematographic films, videos, programmes, commercials and television commercials.
Cinematographic film and video exhibition activities.
Sound recording and music editing activities.
Programming and transmission activities in the sound broadcasting service.
Television programming and broadcasting activities.
Computer systems development activities (planning, analysis, design, programming, testing).
Computer consulting activities and computer facility management activities
Architectural and engineering activities and other related technical consulting activities.
Research and experimental development in the field of social sciences and humanities,
Specialised design activities.
Photography activities.
Literary creation.
Musical creation.
Theatrical creation.
Audio-visual creation.
Plastic and visual arts.

*Continues*

Theatrical activities
Live musical entertainment activities.
Other live entertainment activities.
Library and archive activities.
Activities and operation of museums, preservation of buildings and historical sites.
Activities related to cultural tourism.
Activities related to sports, recreation and leisure.

Considering that all activities but cultural tourism and sports, recreation and leisure correspond to ISIC codes, Decree 286 of 2020 includes the following definitions:

### *Cultural Activities*

- Activities of production and registration of Colombian handcrafts and cultural heritage trades aimed at the protection of movable and immovable property cultural heritage.
- Administration and promotion activities of cultural attractions that are included in the inventory administered by the Ministry of Commerce, Industry and Tourism, which have been declared cultural properties or are part of the manifestations of intangible cultural heritage.
- Tourist transport activities with themes associated with the Colombian cultural heritage that are provided exclusively by *chiva*, traditional river-side navigation, *jeepaos*, floats or horseback riding, among other means of transportation that do not include any type of modern transport.
- Interpretation and guidance services provided in tourist resources and attractions.

*Sport Activities*

Activities of human behaviour characterised by a playful attitude and a competitive desire to check or challenge, expressed through physical and mental exercise, within pre-established disciplines and norms aimed at generating moral, civic and social values.

*Recreation Activities*

Processes of participative and dynamic action, which facilitate understanding life as an experience of enjoyment, creation and freedom, in the full development of the potential of the human being for its realisation and improvement of the quality of individual and social life, through the practice of physical or intellectual leisure activities.

*Leisure activities*

Activities whose object is the constructive use that the human being makes of it, for the benefit of his enrichment and the enjoyment of life individually or collectively. These activities have as essential functions rest, fun, the complement of training, socialisation creativity's personal development, liberation at work and psychobiological recovery.

- (i) Only companies with principal domicile in Colombia are eligible.
- (ii) Companies must be incorporated and start activities before December 31, 2021. Entities existing before the creation of this tax incentive are also eligible as long as they fulfil all the mandatory requirements.



- (iii) Companies must produce at least three new jobs directly related to the technological value-added industries and creative activities. The directors of the company do not qualify as employees to fulfil this requirement. The minimum jobs to be created depends on the gross income of the company and vary from three to eight.
- (iv) Only companies with an annual gross income of less than approx. USD770,000 are eligible for this incentive. Companies dedicated to the production of cinematographic films, videos, television programmes, and television advertisements can exceed this cap with the condition of creating extra jobs. One additional extra employee must be hired for every extra gross income of approx. USD192,000.
- (v) Companies must fulfil invest at least approx. USD42,000 in a term of 3 taxable years. If the minimum investment is not meet, the tax benefit is lost from the third year.
- (vi) Users of Free Trade Zones can apply to this tax benefit, as long as they fulfil all the requirements.

Companies that fulfil all these requirements must submit an investment project to the Orange Economy Committee of the Ministry of Culture, with a justification of its financial viability, economic convenience and qualification as an Orange activity. The ministry would study the documentation and issue an administrative act approving the project and confirming that technological value-added industries and creative activities will be carried out.



## Analysis of the Orange Tax Incentives

This section analyses the three Orange tax incentives above identified, taking into account a systematic view of the Colombian tax system to evidence the practical consequences of their application. The formulation of alternatives to enhance the current benefits is also based on tools implemented in other jurisdictions and specialised literature on tax incentives.

Considering that these regulations are still recent in Colombia and that they have not been subject to an exhaustive analysis from tax experts, this work also takes into account opinions provided by key experts of the sector such as Felipe Ossa, CEO of Domicilios.com, a delivery platform that operates in Colombia, who shared his insight on the expectations of the technology sector to the Orange Economy, and Francisco Giraldo, a political scientist and philosopher involved in research related to the Orange economy, who provided his view on the relationship between Orange Economy and the technological added value activities. These opinions are merely informative to better understand the context of the subject, and the main purpose of this work is not analysing their points of view on this matter.

## **Tax incentives to promote the creation of Orange Development Zones (Áreas de Desarrollo Naranja)**

Section 179 of Law 1955 of 2019 establishes policy guidelines for local authorities to implement real estate tax incentives aiming to encourage the creation of attractive zones in which Orange businesses can settle. This measure can be classified as a place-based incentive<sup>35</sup>, as it grants a tax advantage to a location rather than to an activity or an individual. This type of benefit shall therefore propitiate a favourable atmosphere for investment directed to the improvement of targeted areas.

Decree 697 of 2020 regulated this legal provision by indicating that the municipalities are autonomous to establish the conditions of this incentive. Indeed, Section 317 of the Colombian Constitution provides that only municipalities are entitled to levy real estate taxes. Therefore, this tax incentive cannot be directly enforceable by the central government, and its implementation depends on the priorities and the political commitment of the local authorities.

Considering this constitutional limitation to implement real estate incentives by the central government, if the intention of the national government could implement mechanisms to make sure that taxpayers effectively benefit from a tax advantage, regardless of the willingness of local authorities to incentivise these types of

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<sup>35</sup> As further explained below, this classification was used to analyse incentives for the cultural sector in the following publication: Mt. Auburn Associates. Utilising Tax incentives to Cultivate Cultural Industries and Spur Arts-Related Development. A report prepared by the Louisiana Office of the Lt. Governor and the Department of Culture, Recreation and Tourism, (2007).

projects. For example, it could implement an income tax credit for the amount of local taxes paid by income taxpayers concerning the development of these zones. This way, the central government would ensure that investors have a tax incentive to finance the development of Orange Development Zones.

A measure aiming to provide an income tax benefit to offset the tax burden levied at the municipal level should be carefully studied by the competent authorities as it could imply a significative fiscal expenditure for the central government. Besides, such mechanisms could even incentivise local authorities to increase tax rates on local taxes up to the maximum rates permitted by law. In fact, an income tax credit granted by the central government would indirectly finance the cost of additional taxes levied by the local authorities.

Based on four strategies identified by a report prepared in 2007 for the Government of the state of Louisiana to implement place-based incentives for the cultural industry<sup>36</sup>, four possible mechanisms that could boost this incentive are discussed below.

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36 Ibid. 4-5. This study classifies three types of incentives: (i) artist-based tax incentives, (ii) place-based tax incentives, and (iii) industry-based tax incentives. For place-based incentives, it proposes the following strategies:

- Artists are eligible for income tax exemption from sale of their work if they live/work in a designated 'arts district'.
- Galleries and theatres are exempt from sales, amusement, and admissions tax if they locate in a designated 'arts district'.
- Artists are eligible for income tax exemptions and property tax abatements if they live in and rehabilitate designated industrial and historic buildings, thereby increasing property values and spurring revitalisation.
- Developers and property owners are eligible for state historic tax credits if they rehabilitate designated industrial buildings.

- (i) Income tax exemption for income derived from sales of Orange activities if an individual lives in an Orange Development Zone.

This strategy is intended to incentivise individuals linked to the Orange sector to live in Orange Development Zones. It could also be implemented to incentivise the establishment of businesses in these zones.

In Colombia, this could be achieved by using the SIMPLE tax regime, introducing a special tax rate applicable to income derived from Orange activities carried out in Orange Development Zones by entrepreneurs living in these districts or businesses located in these areas. This preferential rate could serve as an incentive for individuals and small enterprises to move to these areas and formalise their activities by registering with the national tax registry. This measure could promote the formalisation of entrepreneurs and complement the existing income tax exemption for Orange Economies that currently only applies for companies dedicated to Orange activities, regardless of where in Colombia they conduct their activities.

Alternatively, municipalities interested in promoting the creation of these zones could also create a tax relief measure in the industrial and commercial municipal gross income tax collected locally. This tax relief could consist of an exemption or a reduced tax rate for Orange activities carried out in the Orange Development Zones. In fact, the municipality of Medellín implemented a benefit on the industrial and commercial municipal gross income tax for Orange activities carried out in El Perpetuo Socorro Orange Development Zone<sup>37</sup>.

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<sup>37</sup> Article 318 of the Municipal Resolution 066 of 2017 and Decree 2474 of 2019 of the Municipality of Medellín.

(ii) Sales tax exemption for attractions located in the area.

The central government could work towards boosting Orange Development Zones by introducing a VAT exemption for products finished and activities performed in these zones. This alternative would require a reform to the VAT rules in the national tax code and to create a mechanism to incorporate a list of the Orange entrepreneurs located in these zones in the national tax registry.

(iii) Income tax and real estate tax exemptions for individuals living in renovated buildings.

Individuals living in renovated buildings in the area, regardless of the type of activity that generates their income could be entitled to a special income tax deduction derived from their status as residents of the Orange Development Zone. This measure would stimulate renting or purchasing properties in renovated buildings located in these zones. However, the lack of causality between the tax benefit (income tax relief) and its cause (living in a specific area), makes it more suitable to establish a tax incentive to real-estate taxes instead. In this sense, the strategy adopted in Colombia by Law 1955 of 2019 would be more accurate than this type of incentive, which is more about promoting the physical renovation of an area.

(iv) Historic tax credits for rehabilitation of buildings.

The Colombian tax regime already provides real estate tax relief for historic and cultural properties. For example, Regulation 105 of 2003 of the District Council of Bogota provides that properties declared national monuments or cultural properties benefit from a real estate tax exemption of up to 100% of the tax liability, depending on the type and use of the property.

This mechanism can be applied for buildings located in Orange Development Zone, as long as these buildings are declared national monuments or cultural properties. As this benefit is related to property taxes, its applicability would depend on the regulations issued by the corresponding municipality.

### **Deduction for investments or donations to Orange projects**

The special deduction of 165% of the value invested or donated to Orange projects or invested by Orange businesses constitutes an attractive stimulus for financing Orange economy entrepreneurship. The existing incentive targets the following types of projects approved by the Ministry of Culture: (i) Orange projects, (ii) plans to conserve the cultural heritage, (iii) programmes to enhance the cultural infrastructure, and (iv) projects implemented in Orange Development Zones.

Section 180 of Law 1955 of 2019 authorises the Ministry of Culture to issue an annual call for submissions of (i) Orange projects, (ii) programmes to enhance the cultural infrastructure, and (iii) projects implemented in Orange Development Zones, which would be entitled to issue income tax deduction certificates for the investments or donations made for funding these projects. Decree 697 of 2020 also offers the possibility for micro, small, and medium enterprises exclusively dedicated to Orange activities to benefit from this special deduction for investments made in their own Orange projects.

One of the limitations of this benefit is the fact that apart from internal investments by micro, small, and medium enterprises dedicated to Orange activities, the only other projects eligible for deduction certificates are those approved by the Ministry of Culture. This requirement



is intended to ensure the viability and pertinence of projects to guarantee that the fiscal effort of granting tax relief is rewarded by a real economic impact. However, this prior approval requirement may limit the potential to attract significant investment flows towards the Orange sector. It is therefore advisable to examine the possibility of waiving this proceeding and replace it with minimum legal requirements that projects must fulfil and more robust monitoring by the DIAN.

Depending on the fiscal situation of the Colombian treasury, it could also be possible to explore the possibility to enhance this incentive by establishing an income tax credit for the amount invested or donated to Orange projects. Such tax credit would be a more beneficial tax treatment than the existing deduction, which could positively impact the sector to a greater extent.

Wiesner and Giraldo<sup>38</sup> point out that financing Orange business to foster innovation and growth is fundamental to preventing their collapse in their early stages. In this regard, the Colombian Government should stimulate investments in this sector by private business angels and venture capital funds that can provide more funds at the early stage of entrepreneurship. Below are some possible tax incentives that could be implemented to encourage business angels and venture capital funds.

### Attracting business angels

One of the ways to encourage investment in companies in the early stages is by stimulating angel investment.

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38 Wiesner Manrique, Daniel and Francisco Giraldo Jaramillo. *Economía Naranja: hacia una política pública asertiva*. (Colombia: Instituto de Ciencia Política Hernán Echavarría Olóza, 2019), 13-22.

In other jurisdictions, this type of funding has been promoted through tax relief on investment, capital gains, and losses aiming to increase the number of angel investors and the amount of capital invested by angel investors in a particular type of entrepreneurship<sup>39</sup>.

In Colombia, this type of incentive could be implemented through an income and capital gain tax exemption for gains derived from investments in Orange start-ups. The specialised literature has criticised these relief measures because they can lead to wealthy individuals to invest money without transferring knowledge and networking to the business<sup>40</sup>. Hence, the benefit should be conditioned to proving the transfer of expertise and contacts, as well as money.

Another alternative that could be attractive for high net worth individuals in Colombia would be the reintroduction of a wealth tax from which taxpayers can subtract investment in Orange activities from the taxable base and therefore reduce their wealth tax liability. This could serve as a significant incentive to transfer capital to this sector of the economy.

### Attracting venture capital investments

Another alternative to finance Orange start-ups is through venture capital. Wiesner and Giraldo<sup>41</sup> concluded that this source of financing is still scarce in

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39 OECD. *Industry and Technology Policies in Korea*. (OECD Publishing, 2014), 154.

40 Ibid.

41 Wiesner Manrique, Daniel and Francisco Giraldo Jaramillo. *Economía Naranja: hacia una política pública asertiva*. (Colombia: Instituto de Ciencia Política Hernán Echavarría Olózaga, 2019), 24.

Colombia, making it necessary to create more attractive incentives to generate private funds specialised in investing in innovation. Taxwise, Wiesner and Giraldo<sup>42</sup> refer to the Chinese model to promote venture capital investments in early stages, which contemplates tax credits for the funds of up to 70% of the amount invested and tax credits for the investors in the funds of up to 30% of the amount invested.

In Colombia, private funds are transparent for income tax purposes. However, as a general rule, income received by the investors though the fund is deferred to the time when profits are effectively distributed. Hence, a tax incentive for promoting investments in Orange businesses in Colombia should target the investor rather than the fund.

A report on the effectiveness of tax incentives for venture capital and business angels to foster the investment of SMEs and start-ups, prepared by the European Commission states the following about the most accurate means to incentivise these types of entrepreneurship:

Taxes on income generated during the holding period are less relevant in the context of venture capital and business angel investments in start-ups as they are unlikely to make dividend distributions. However, the tax treatment of capital gains or losses realised on the disposal of an investment will influence the risk appetite and decision-making process of a prospective investor. For instance, tax relief for capital gains or the provision of loss relief on a more favourable basis than the baseline tax system could support the derisking of investments in young, growing and innovative businesses<sup>43</sup>.

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<sup>42</sup> Ibid.

<sup>43</sup> European Commission. Effectiveness of tax incentives for venture capital and business angels to foster investment in

In line with these considerations and the fact that investments through private funds allow Colombian taxpayers to defer income, the Orange tax incentives should contemplate tax relief for capital gains or income derived from the sale of investments in Orange start-ups. As explained in the next section, income tax relief applied to income received by legal entities during the first years of activity cannot be effective given that in its early stages the business may not be expected to generate profits. In this regard, an alternative to be implemented in Colombia would be that of introducing a tax exemption to capital gains or income received by individuals or companies upon the sale of their investments in Orange start-ups through venture capital funds.

## **Income tax exemption for Orange activities**

Article 234-2 of the Colombian tax code, numeral 1 establishes a 7-year income tax exemption for companies dedicated to certain Orange activities and technological value-added activities. The analysis of this tax exemption will be divided into the following aspects of this benefit: (i) activities covered, (ii) interim nature, (iii) eligible taxpayers, and (iv) limited scope.

### **(i) Activities covered**

Despite this exemption being known as an Orange Economy income tax incentive, the activities covered in the corresponding section of the tax code differ from the

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SMEs and start-ups. Final Report TAXUD/2015/DE/330 FWC No. TAXUD/2015/CC/131. (Office for Official Publications of the European Communities, 2017), 3.

list of ISIC activities identified by the DANE as Orange activities.

On the one hand, the following Orange activities are not included in the tax incentive:

News agency activities.
Other information service activities.
Advertising.
Cultural teaching.
Botanical gardens, zoos and nature reserves activities.
Amusement park and theme park activities.

Additionally, the list of partially included ISIC Orange activities is not covered by this benefit either. In this sense, activities such as the manufacture of leather articles or retail trade of other cultural and entertainment items in specialised stores are not eligible. As explained in Section 2.1.3. of this work, (i) new theme parks, (ii) ecotourism and agricultural parks, and (iii) nautical docks, benefit from reduced income taxation of 9%. The extension of the preferential tax rate varies between 10 or 20 years, depending on the size of the municipality where these are located.

The following activities included in this income tax exemption are not part of the list of ISIC Orange activities:

Computer systems development activities (planning, analysis, design, programming, testing).
Computer consulting activities and computer facility management activities
Architectural and engineering activities and other related technical consulting activities.
Research and experimental development in the field of social sciences and humanities.
Activities related to cultural tourism.

One of the purposes of this tax incentive, as it is expressly mentioned in article 235-2 numeral 1 of the tax code is the promotion of creative activities as well as industries with technological added value. In this regard, it includes (i) computer systems development activities (planning, analysis, design, programming, testing); (ii) computer consulting activities and computer facility management activities; and (iii) architectural and engineering activities and other related technical consulting activities.

According to Francisco Giraldo<sup>44</sup> —researcher of a Colombian think tank, and who has evaluated the Orange policy—, the inclusion of technological added value activities should not be understood as an extension of the benefit to areas not covered by the Orange Economy. On the contrary, the specific technological added value activities included are part of the Creative Industries, New Media and Software category. Giraldo's approach to the term evinces the lack of consensus on the definition of the activities covered by the Orange Economy. While for the purpose of this work, we assume that creative industries require a cultural element to be part of the Orange Economy, other experts such as Giraldo do not consider this element essential.

It is clear that democratic institutions are free and have the sovereignty to determine the scope of the policy. In particular, Congress is the body entitled to define the scope of tax benefits. However, the lack of coherence between the theoretical definition of the Orange Economy and the activities covered by this exemption can affect the perception of taxpayers and entrepreneurs interested in the Orange Economy in terms

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44 Giraldo Jaramillo, Francisco. Interview conducted via email on July 18, 2020. Translation in Annex B.

of the implementation of this public policy. In this regard, Felipe Ossa<sup>45</sup> —CEO of Domicilios.com— considered that the communication of the definition and areas covered by the Orange Economy is ambiguous and confusing. In his view, during Duque's presidential campaign, the technology sector was given the impression that the Orange policy would boost the creation of a regional technology centre. However, the actual implementation of the policy did not include this sector. Given the above, the technology industry may have an apathetic approach to the Orange policy and a perception that the Orange Economy promotes the cultural sector more than it does technology-related companies. Ossa's view evinces the lack of clarity on the cultural aspect of the cultural activities covered by the Orange Economy and the negative impact that this uncertainty can cause, making key entrepreneurs that could contribute to the implementation of the Orange policy apathetic in terms of the Orange Economy.

The inclusion of IT activities in the scope of this incentive, also raises questions regarding possible distortions in the IT sector. This points to the need to discuss the possibility of extending the range activities covered by this exemption to other IT activities or establishing an analogous incentive for the IT sector. In this regard, in Giraldo's view<sup>46</sup>, other IT activities not belonging to the Orange Economy should also benefit from this or other kinds of tax incentive to operate and generate innovations in Colombia, considering that this industry is particularly volatile and can quickly move to other jurisdictions. For this purpose, one alternative would

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45 Ossa, Felipe. Interview conducted via Zoom on July 20, 2020.

46 Giraldo Jaramillo, Francisco. Interview conducted via email on July 18, 2020. Translation in Annex B.

be to improve the benefits for research, development, and innovation activities (referred to in Section 2.1.4.) by waiving the requirement of prior approval of public institutions or establishing a tax credit instead of a tax deduction. In any case, the government must develop a fluent communication with the IT sector, that have an interest in collaborating with the government to boost the creation of a regional technology centre in Colombia.

## (ii) Interim Nature

This benefit is limited to the incorporation and initiation of activities before December 31, 2021 and the submission of a request to the Orange Economy Committee in the following time slots: March 1-31, July 1-30, or October 1-31 (Decree 286 of 2020). As a result, this exemption must be classified as a temporary tax incentive for companies that started activities before the end of 2021, which could lead to an increase in Orange start-ups during a limited period of time.

The tax exemption is also limited to a term of 7 years counted from the adoption of the act authorising the company to benefit from the exemption to be issued by the Ministry of Culture. Wiesner and Giraldo argue that this limitation might cause the benefit to be inefficient, as, generally, new entrepreneurship suffer losses during the first years and therefore do not have to pay income tax<sup>47</sup>. Indeed, losses generated by Orange activities cannot be carried forward considering that the Colombian tax system establishes the possibility to

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47 Wiesner Manrique, Daniel and Francisco Giraldo Jaramillo. *Economía Naranja: hacia una política pública asertiva*. (Colombia: Instituto de Ciencia Política Hernán Echavarría Olózaga, 2019), 24.



carry forward losses for a term of 12 years provided that these losses are not related to non-taxable and exempted income.

As an alternative, Wiesner and Giraldo<sup>48</sup> suggest that a VAT exemption for these activities could be more effective in boosting the activities of small and medium enterprises whose suppliers are normally individuals not responsible for VAT. When the suppliers are not responsible for this tax, the company will not be able to deduct VAT paid on the acquisition of supplies from the tax collected from its customers. In this regard, exempting or excluding Orange products and services from VAT would level the conditions of competition with more prominent companies that can usually deduct VAT from the tax they collect as their suppliers tend to be responsible for VAT. A thorough proposal presented in this study consists of VAT exemption for a new enterprise's first years of operations, and levying their activities with VAT once it is more consolidated. Once this tax is levied, VAT would be compensated with reductions or exemptions in income tax.

The government should consider this proposal and the possibility to extend both the term to start the Orange activity and the length of time for this exemption to be valid.

### (iii) Eligible Taxpayers

Only companies domiciled in Colombia with an annual income of less than approx. USD 700,000 are eligible for this incentive. The exclusion of companies with annual incomes exceeding this cap should be reviewed considering that this could disincentivise the growth

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<sup>48</sup> Ibid.

of companies, harming businesses with low-profit margins. As per the exclusion of individuals, a special tax treatment applied to Orange activities carried out by individuals registered in the SIMPLE tax regime could be established, promoting the formalisation of self-employed entrepreneurs. For example, Orange income could be exempted or subject to a reduced rate.

Concerning job creation and investment commitments, the Explanatory Memorandum of Law 1819 of 2018<sup>49</sup> clarifies that these minimum requirements respond to the intention of not generating a negative fiscal impact to the national treasury. According to this document, the purpose is to create a benefit for new productive units that would not exist without this incentive.

The fact that a project must be approved by the Orange Economy Committee of the Ministry of Culture creates an additional barrier to access this incentive. Although this mechanism may address the responsible use of fiscal resources and control the use of the stimulus, it should be removed and replaced by DIAN monitoring that companies benefiting from this exemption fulfil the legal requirements.

#### (iv) Limited Scope

The Colombian dividend tax system establishes a mechanism to recapture untaxed dividends at corporate level. Hence, dividends distributed that correspond to tax-exempted income will be subject to an increased dividend tax rate that incorporates the dividend tax and the corporate income tax. The following table illustrates

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49 Government of Colombia. Ministry of Finance. Explanatory Memorandum of the Bill Act “through which norms for the promotion of economic growth are adopted”, p. 76.

the dividend tax rates for taxed and untaxed income at corporate level<sup>50</sup>:

Beneficiary	Profits taxed at corporate level	Profits untaxed at corporate level
Colombian companies	7.5%	37.1%
Resident individuals	0% or 10%	32% or 38.8%
Foreign companies	10%	38.8%
Non-resident individuals	10%	38.8%
Permanent establishments	10%	38.8%

This system implies that, from the investor's perspective, this tax exemption only defers the income tax to the moment when the Orange company distributes dividends produced by these untaxed profits.

As explained in Section 2.1.1., the original wording of the book publishers' tax exemption also contemplated that in case a company benefited from this exemption, dividends distributed to the shareholders corresponding to tax-exempted income would also be untaxed. The income tax exemption for Orange activities could also provide similar treatment to shareholders, so the overall effect of the exemption is a lower tax burden and not just a tax deferral.

Another cause of the limited scope of this incentive is the fact that the Colombian tax system includes an industrial and commercial municipal tax collected at local level that levies the gross income earned in the municipalities at rates that vary between 2 per thousand

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50 Table elaborated considering the information in: Lataxnet. Managing corporate taxation in Latin American countries an overview of main corporate taxes in selected jurisdictions in 2020. (Lataxnet, 2020), 127.

and 13 per thousand depending on the specific activity and the corresponding municipality in which the activity is carried out. This tax is not within the scope of the tax exemption and is payable by taxpayers involved in Orange activities. Since 2019, 50% of the industrial and commercial municipal tax paid is creditable against the income tax. From 2022, 100% of the tax paid will be creditable, potentially fully relieving the industrial and commercial municipal tax.

## Conclusions and recommendations

The Orange Economy is a novel concept that includes cultural and creative industries. Considering that from a theoretical point of view, discussions on its exact scope are ongoing, for the purposes of this work, the Orange Economy is understood as a sector of the economy composed by cultural and creative activities, defined by their symbolic value instead of their use value, and that result in the transformation of ideas into cultural goods and services. Cultural activities include arts, heritage, and conventional cultural industries. Creative activities include functional creations, new media and software, and creativity supporting activities.

To implement the Orange policy in Colombia, the DANE delimited the scope of activities covered by this concept, and the government has set up a set of regulations to promote the Orange Economy. In this process, some areas of the technology industry that expected to be covered by the Orange policy were excluded and some other activities that do not fulfil the terms of the conceptual definition of the terms were included.

Besides a set of tax instruments that already indirectly benefited some activities related to the Orange

Economy, the following three Orange tax incentives have recently been implemented in Colombia: (i) The tax incentive for the creation of Orange Development Zones, that proposes real-estate tax relief to reduce property costs in the establishment of these zones; (ii) the tax deduction for investments and donations to Orange projects that seeks to promote the financing of Orange Economy businesses; and (iii) the 7-year tax exemption for companies dedicated to Orange activities, intended to reduce corporate income tax to boost Orange entrepreneurship.

This work assesses whether the incentives implemented fulfil their purposes and presents ideas to enhance them. For this purpose, the analysis is based on a systematic view of the Colombian tax system to find out the interaction of these three tax instruments with other tax provisions, the opinions of experts about the context of the incentives, and comparable tools implemented in other countries.

Regarding the tax incentive for the creation of Orange Development Zones, article 179 of Law 1955 of 2019 establishes the possibility for municipalities to implement real estate tax relief for the promotion of these zones. An essential factor that blocks this measure is that the taxation of real property is an exclusive faculty of the municipalities. In this sense, the central government could ensure the existence of relief for the taxpayers by introducing an income tax credit to real-estate taxes paid by taxpayers who develop these zones or implement other tax benefits related to the activities carried out in these areas. The existing incentive could also be complemented with the following measures:

- (i) A special tax rate for SIMPLE regime taxpayers living or domiciled in Orange Development Zones, involved in Orange activities in these territories;

- (ii) a tax stimulus in the industrial and commercial municipal tax collected locally; or
- (iii) a VAT exemption for products finished in these zones or activities carried out in these locations.

The stimulus for investments or donations in Orange projects and own investments in micro, small, and medium enterprises exclusively dedicated to Orange activities seeks to attract funding to the Orange Economy. However, the requirement of obtaining prior approval of the Ministry of Culture for issuing deduction certificates limits the potential impact of this measure. Concerning the financing of Orange entrepreneurship, the benefit cannot be applied by large companies, limiting the possibility to attract considerable investments in the Orange Economy. This benefit could have a more substantial impact if a tax credit instead of a tax deduction were implemented. Considering that one of the main obstacles for developing this sector is the lack of options to finance new businesses in this sector, the Colombian Government should promote investments made by business angels and venture capital. From a tax perspective, these funding strategies could be incentivised by reducing taxation on the gains resulting from the growth in the value of these investments and the possibility to subtract investments in Orange business from the taxable base of an eventual new wealth tax.

The 7-year tax exemption for companies dedicated to Orange activities is intended to promote the creation of Orange businesses. The main limitations of this incentive are:

- (i) the fact that it only benefits companies starting activities before the end of 2021;
- (ii) the 7-year limitation of the exemption instead of a longer-term exemption or an evergreen exemption;

- (iii) the prior approval proceeding before the Ministry of Culture instead of an exemption granted to businesses carrying out activities listed in the law;
- (iv) the fact that profits exempted at company level will be subject to a dividend tax that recaptures the amount untaxed;
- (v) the list of activities covered, which does not include certain Orange activities listed by the DANE;
- (vi) the fact that companies with a gross income of approx. more than USD700,000 are not eligible; and
- (vii) the non-inclusion of individuals.

In this regard, this mechanism could be improved with the following measures:

- (i) extending the deadline for starting operations and even discussing the possibility of establishing it as a permanent incentive;
- (ii) setting it as an automatic exemption for income derived from Orange activities, waiving the requirement of prior approval of projects by the Ministry of Culture and enhancing the DIAN's monitoring capacities;
- (iii) extending the benefit also to the distribution of dividends to the shareholders;
- (iv) discussing the list of activities covered or implementing other tax incentives for the technology sector;
- (v) complementing this with a preferential tax rate for income derived from Orange activities generated by individuals registered in the SIMPLE Regime;
- (vi) extending the current tax exemption to enterprises with gross income above the current cap to access this benefit (approx. USD 700,000);
- (vii) considering that new businesses may not be expected to produce profits during the first seven



years, it could be replaced by a VAT exclusion of Orange products and services.

The existence of these three tax incentives evinces the commitment of the Colombian Government to boost the Orange Economy granting benefits for the creation of Orange Development Zones, promoting sources of funding for Orange entrepreneurship and granting tax relief for certain companies starting a business in the sector. This analysis shows that in spite of the fact that these measures provide benefits for specific activities related to the Orange Economy, the Orange policy could be enhanced by granting a more comprehensive package of tax benefits that should not exclude certain taxpayers or specific activities of this sector. Considering that this work is a conceptual analysis of the existing measures and possible alternatives, further studies should focus on economic studies about the actual impact of the current incentives and the potential impact of the other options.



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## Annex A

Original version of Section 235-2, num. 1 of the Colombian tax code

1. Incentivo tributario para empresas de economía naranja. Las rentas provenientes del desarrollo de industrias de valor agregado tecnológico y actividades creativas, por un término de siete (7) años, siempre que se cumplan los siguientes requisitos:
  - a. Las sociedades deben tener su domicilio principal dentro del territorio colombiano, y su objeto social exclusivo debe ser el desarrollo de industrias de valor agregado tecnológico y/o actividades creativas.
  - b. Las sociedades deben ser constituidas e iniciar su actividad económica antes del 31 de diciembre de 2021.
  - c. Las actividades que califican para este incentivo son las siguientes:

CÓDIGO CIU	DESCRIPCIÓN DE LA ACTIVIDAD
3210	Fabricación de joyas, bisutería y artículos conexos
5811	Edición de libros
5820	Edición de programas de informática (software)
5911	Actividades de producción de películas cinematográficas, videos, programas anuncios y comerciales de televisión
5912	Actividades de posproducción de películas cinematográficas, videos, programas, anuncios y comerciales de televisión
5913	Actividades de distribución de películas cinematográficas, videos, programas, anuncios y comerciales de televisión
5914	Actividades de exhibición de películas cinematográficas y videos
5920	Actividades de grabación de sonido y edición de música
6010	Actividades de programación y transmisión en el servicio de radiodifusión sonora
6020	Actividades de programación y transmisión de televisión
6201	Actividades de desarrollo de sistemas informáticos (planificación, análisis, diseño, programación, pruebas)
6202	Actividades de consultorio informática y actividades de Administración de instalaciones informáticas
7110	Actividades de arquitectura e ingeniería y otras actividades conexas de consultorio técnica
7220	Investigaciones y desarrollo experimental en el campo de las ciencias sociales y las humanidades
7410	Actividades especializadas de diseño
7420	Actividades de fotografía

*Continúa*



9001	Creación literaria
9002	Creación musical
9003	Creación teatral
9004	Creación audiovisual
9005	Artes plásticas y visuales
9006	Actividades teatrales
9007	Actividades de espectáculos musicales en vivo
9008	Otras actividades de espectáculos en vivo
9101	Actividades de bibliotecas y archivos
9102	Actividades y funcionamiento de museos, conservación de edificios y sitios históricos
	Actividades referentes al turismo cultural
	Actividades relacionadas con Deporte, recreación y aprovechamiento del tiempo libre

- d. Las sociedades deben cumplir con los montos mínimos de empleo que defina el Gobierno nacional, que en ningún caso puede ser inferior a tres (3) empleados. Los empleos que se tienen en cuenta para la exención en renta son aquellos relacionados directamente con las industrias de valor agregado tecnológico y actividades creativas. Los administradores de la sociedad no califican como empleados para efectos de la presente exención en renta.
- e. Las sociedades deben presentar su proyecto de inversión ante el Comité de Economía Naranja del Ministerio de Cultura, justificando su viabilidad financiera, conveniencia económica y calificación como actividad de economía naranja. El Ministerio debe emitir un acto de conformidad con el proyecto y confirmar el desarrollo

de industrias de valor agregado tecnológico y actividades creativas.

- f. Las sociedades deben cumplir con los montos mínimos de inversión en los términos que define el Gobierno nacional, que en ningún caso puede ser inferior a cuatro mil cuatrocientas (4.400) UVT y en un plazo máximo de tres (3) años gravables. En caso de que no se logre el monto de inversión se pierde el beneficio a partir del tercer año, inclusive.
- g. Los usuarios de zona franca para aplicar a los beneficios establecidos en este numeral, siempre y cuando cumplan con todos los requisitos señalados en este artículo para efectos de acceder a esta exención.

(...)

**PAR 1.** La exención consagrada en el numeral 1 del presente artículo aplica exclusivamente a los contribuyentes que tengan ingresos brutos anuales inferiores a ochenta mil (80.000) UVT y se encuentren inscritos en el Registro Único Tributario como contribuyentes del régimen general del impuesto sobre la renta. Los anteriores requisitos deben cumplirse en todos los periodos gravables en los cuales se aplique el beneficio de renta exenta.

El presente párrafo no aplica para aquellas sociedades cuyo objeto social principal sean actividades enmarcadas dentro de la Clasificación de Actividades Económicas CIIU 5911.





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